PERWIRA HABIB BANK (M) BHD.

v.

HJ. ABDULLAH HJ. SULAIMAN & ANOR.

HIGH COURT MALAYA, KUALA LUMPUR
VC GEORGE J
[SUIT NO. C 544 of 1981]
8 APRIL 1985

CIVIL PROCEDURE: *Summary procedure under O. 27 r. 3 of Rules of the High Court 1980 - Admission of liability - Solicitors' letter proposed instalment payments - Not marked "without prejudice" - Whether unequivocal admission of liability.*

The defendants were sued as guarantors of a customer of the plaintiff bank. Judgment in default was entered against the second-named defendant. The 1st defendant entered an appearance and filed a statement of defence. Thereafter, the 1st defendant's solicitors wrote a letter to the plaintiffs' solicitors which was not marked "without prejudice", proposing that the 1st defendant be allowed to pay the judgement sum by monthly installments of RM10,000.

The plaintiffs then sought to obtain summary judgment on the basis that pursuant to O. 27 of the Rules of the High Court 1980 the letter amounted to an admission of the plaintiffs' claim. This application was dismissed with costs by the Senior Assistant Registrar. The plaintiffs appealed against that decision.

Held:

[1] Whether the letter was written before or after the statement of defence was filed is not the point. The question is whether what was stated was an admission of fact and if so whether that admission entitled the applying party to a judgment or order.

[2] The admission must amount to an unequivocal admission before judgment by the summary procedure provided by O. 27 r. 3 can be granted.

[3] The admission may be implied from all the circumstances.

[4] In the instant case, "I will pay" does not necessarily imply "as I am legally obliged to do", hence there was no unequivocal admission that called for summary judgment pursuant to O. 27 r. 3.

[Appeal dismissed with costs.]

Case referred to:
Low Boon Por v. Selangor Engineering Works [1971] 1 MLJ 124

Legislation referred to:
Rules of the High Court 1980, O. 27 r. 3, O. 3 r. 6

For the plaintiffs/appellants - Su Tiang Joo; M/s Adnan Sundra & Low
For the 1st defendant/respondent - Harpal Singh; M/s A.J. Ariffin, Chong & Harpal

JUDGMENT

VC George J:

The plaintiff bank having obtained judgment against a customer of theirs called Dewan Enterprise (M) Sdn. Bhd. caused the instant writ to issue against the two defendants claiming the said judgment amount against the defendants as guarantors of the said customer of the

bank. The second named defendant did not appear to the writ and judgment in default was eventually entered against him. The first named defendant entered an appearance and filed a statement of defence, the terms of which invited O. 14 proceedings. It would seem that the necessary summons was filed but, apparently through an administrative slip up, the summons never came on for hearing. Meanwhile, the suit was allowed to lie dormant and accordingly a notice of intention to proceed under O. 3 r. 6 of the Rules of the High Court 1980 dated 24 November 1983 was served on the solicitors of the first defendant who thereupon wrote to the plaintiffs' solicitors the letter of 9 January 1984 which letter was not marked without prejudice and is here reproduced.

Dear Sirs,

C.S. No. C 544/1981

We refer to the above matter and to your notice of 24 November 1983.

We have been instructed by our client to implore that he be allowed to pay the judgment sum by monthly installments of RM10,000. In the interim we enclose herewith our client's cheques as follows:

1) No. 031830 - dated 9 January 1984
2) No. 031831 - post-dated to 9 February 1984
3) No. 031832 - post-dated to 9 March 1984
4) No. 031833 - post-dated to 9 April 1984
5) No. 031834 - post dated to 9 May 1984

Kindly let us know the balance sum which is due to your clients.

Thank you.

Yours faithfully,

sgd.

As a result of that letter the plaintiffs took out their summons encl. (23) seeking judgment for the amount prayed on the contention that pursuant to O. 27 of the Rules of the High Court 1980 the said letter amounted to an admission of the plaintiffs' claim. The application was dismissed with costs by the Senior Assistant Registrar. There is now this appeal against that decision.

In *Low Boon Por v. Selangor Engineering Works* [1971] 1 MLJ 124, there were letters by the defendants admitting a debt to the plaintiff and offering to pay it off in installments. When the plaintiff sued, the defendants filed a defence invoking the Moneylenders Ordinance 1951 and contending that the debt was unenforceable. Abdul Hamid J (as he then was) said at p. 125:

> In the instant case the defendants would appear by their letters dated 10 June 1967 and 29 June 1967 to have admitted the loan. Nevertheless they have from the pleadings, raised an issue of law. If the defendants should succeed in their defence at the trial of this action, they would then be relieved from the liability to pay the plaintiff. ....
>
> In the circumstances, it is my judgment that this is not a case in which r. 6 of O. 32 (of the Rules of the Supreme Court equivalent to O. 27 rule 3 of the Rules of the High Court 1980) should apply.

It was pointed out that in the instant case the letter on which the plaintiffs depend on was written after the statement of defence was filed. In my view whether the letter was written before or after the statement of defence was filed is not the point. The question is whether what is stated is an admission of fact and if so whether that admission entitles the applying party to a judgment or order. The admission may be implied from all the circumstances but the Court must be satisfied that it amounts to an unequivocal admission for it to pronounce judgment by the summary procedure provided by O. 27 r. 3.

By the statement of defence the second defendant had denied that he had executed the guarantee document and that in any event it was not binding upon him. - I will assume that the reasons for saying so will be given if particulars are sought. In my judgment it cannot be said that by that letter the first defendant has unequivocally admitted to liability for the claim made. "I will pay" does not necessarily imply "as I am legally obliged to do".

I am of the view that letter does not provide the plaintiffs with the sort of admission that calls for summary judgment pursuant to O. 27 r. 3. The appeal is dismissed with costs.

Also found at [1985] 2 CLJ 489